Draft Regulations laid before Parliament under section 236(3) of the Employment Rights Act 1996 (c. 18), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2026 No.

TERMS AND CONDITIONS OF EMPLOYMENT

The Employment Rights Act 1996 (Application of Section 80B to Parental Order Cases) (Amendment) Regulations 2026

Made - - - -	*****
Coming into force - -	*10th March 2026*

The Secretary of State makes these Regulations in exercise of the power conferred by section 80B(9) of the Employment Rights Act 1996(**a**).

In accordance with section 236(3) of that Act(**b**), a draft of the instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1. These Regulations—

(a) may be cited as the Employment Rights Act 1996 (Application of Section 80B to Parental Order Cases) (Amendment) Regulations 2026,

(b) come into force on 10th March 2026, and

(c) extend to England and Wales and Scotland.

Amendment of the Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014

2.—(1) The Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014(**c**) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)—

(a) in paragraph (2), after the definition of "intended parent", insert—

(**a**) 1996 c. 18. Section 80B was inserted by section 1 of the Employment Act 2002 (c. 22) and amended by sections 118(7), 121(2), 122(4) (which inserted subsection (9)), 128(2)(b) of, and paragraph 33 of Schedule 7 to, the Children and Families Act 2014 (c. 6), section 1(3) of the Paternity Leave (Bereavement) Act 2024 (c. 17), sections 16(2) and 17(2) of the Employment Rights Act 2025 (c. 36) and by S.I. 2016/413 (W. 131).

(**b**) Section 236(3) was amended by paragraph 42(3) of Schedule 4 to the Employment Relations Act 1999 (c. 26), paragraph 49(3) of Schedule 7 to the Employment Act 2002 (c. 22) and paragraph 44 of Schedule 1 to the Work and Families Act 2006 (c. 18). There are other amendments not relevant to this instrument.

(**c**) S.I. 2014/3095; amended by S.I. 2018/1413.

""primary parental order parent", in relation to a child, means the person who elects to be the child's primary carer—

(a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008(**a**) in respect of the child, or

(b) who applies, or intends to apply, during the period of 6 months beginning with the day of the child's birth, with another person for such an order in respect of the child, and expects the court to make that order;";

(b) after paragraph (2), insert—

"(3) For the purposes of the definition of "primary parental order parent" in paragraph (2), a person ("A") elects to be a child's primary carer if A and the person ("B") with whom A has applied, or intends to apply, for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child agree that A, and not B, will be the child's primary carer.".

(3) In regulation 4 (application of sections 80A and 80B of the Act to parental order parents), after "section 54 parental order parents", insert "and primary parental order parents".

(4) In the table in Schedule 2, in the second column of the entry for section 80B—

(a) after "Omit subsection (6B).", insert—

"For subsection (6C)(**b**) substitute—

"(6C) In relation to cases where the primary parental order parent of a child dies, this section has effect as if—

(a) in subsection (1)(c), after "intended parent" there were inserted "or primary parental order parent";

(b) after subsection (1) there were inserted—

"(1A) But in a case where the primary parental order parent of a child dies and—

(a) the employee does not apply for an order under section 54 of the Human Fertilisation and Embryology Act 2008 within the time limit set by subsection (3) of that section,

(b) the employee's application for an order under that section for the child is refused, withdrawn or otherwise terminated without the order being granted and any time for an appeal or a new application has expired, or

(c) the child dies,

the regulations may provide that an employee who satisfies those conditions is entitled to leave under this section despite the fact that the leave cannot be taken for that purpose.".".";

(b) in the insertion of subsection (7A)—

(i) omit the "and" after the definition of "intended parent";

(ii) at the end of the definition of "parental order" (before the full stop), insert—

(**a**) 2008 c. 22. Section 54 was amended by paragraph 206 of Schedule 11 to the Crime and Courts Act 2013 (c. 22), paragraph 1 of Schedule 9 to the Justice Act (Northern Ireland) 2015 (c. 9) (N.I.) and S.I. 2018/1413.

(**b**) Subsection (6C) was inserted by section 1(3) of the Paternity Leave (Bereavement) Act 2024 (c. 17) and amended by sections 16(2)(b) and 17(2)(b) of the Employment Rights Act 2025 (c. 36).

“;

“primary parental order parent”, in relation to a child, means the person who elects to be the child’s primary carer—

(a) on whose application the court has made an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child, or

(b) who applies, or intends to apply, during the period of 6 months beginning with the day of the child’s birth, with another person for such an order in respect of the child, and expects the court to make that order”;

(c) after the insertion of subsection (7A), insert—

“After subsection (7A) insert—

“(7B) For the purposes of the definition of “primary parental order parent” in subsection (7A), a person (“A”) elects to be a child’s primary carer if A and the person (“B”) with whom A has applied, or intends to apply, for an order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of the child agree that A, and not B, will be the child’s primary carer.”.”.

Name
Title
Department for Business and Trade

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment Rights Act 1996 (Application of Sections 75A, 75B, 75G, 75H, 80A and 80B to Parental Order Cases) Regulations 2014 (S.I. 2014/3095) ("the Principal Regulations") to reflect the amendments made to section 80B of the Employment Rights Act 1996 (c. 18) ("the 1996 Act") by section 1 of the Paternity Leave (Bereavement) Act 2024 (c. 17) ("the 2024 Act") and sections 16(2) and 17(2) of the Employment Rights Act 2025 (c. 36) ("the 2025 Act").

Section 80B of the 1996 Act places a duty on the Secretary of State to make regulations entitling an employee who satisfies specified conditions to be absent from work on paternity leave for the purpose of caring for a child placed for adoption under the law of any part of the United Kingdom or supporting that child's adopter. The Principal Regulations provide, among other things, that section 80B of the 1996 Act has effect, with modifications, in relation to cases which involve an employee who has applied, or intends to apply, with another person for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 (c. 22) and a child who is, or will be, the subject of the order ("parental order cases").

Subsection (6C) of section 80B of the 1996 Act, inserted by the 2024 Act and subsequently amended by the 2025 Act, places a duty on the Secretary of State to make regulations entitling an employee who satisfies specified conditions to be absent from work on paternity leave where the person with whom a child is placed or expected to be placed for adoption dies. That subsection also provides that such regulations may entitle an employee to be absent from work on paternity leave where the child also dies or is, having been placed for adoption, returned. These Regulations make corresponding amendments to the Principal Regulations in relation to parental order cases, and define "primary parental order parent" for those purposes.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary sector or community bodies is foreseen.

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ISBN 978-0-34-827843-9

£6.40

http://www.legislation.gov.uk/id/ukdsi/2026/9780348278439

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